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Ann Marie Schmidt	55873-C	2104
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John P. White		
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1185 Avenue of the Americas		
New York, NY 10036		
		EMCH, GR ART UNIT 1649

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extractions to the many be available under the provisions of 37 CFR 1.73(6). In no event, however, may a reply be timely filed better the considered timely.  If the period for reply separated above, its maximum statutory period unitary statutory minimum of thinty (30) days will be considered timely.  If the period for reply separated above, its maximum statutory period unitary statutory minimum of thinty (30) days will be considered timely.  If the period for reply separated above, its maximum statutory period unitary statutory minimum of thinty (30) days will be considered timely.  If the period for reply separated above, its maximum statutory period unitary and the provision of the period for reply will be set or extended period for reply will be set of the communication.  Fallure to reply within the set of extended period for reply will, by statution, cause the application become ABANCONED (35 U.S.C. § 133). Any may increased by the office of the communication of the provision of the drawing of the provision of the drawing of the provision of the drawing of the drawing of the provision of the drawing of the provision of the drawing of the provision of the pr			Applicat	ion No.	Applicant(s)				
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#### **DETAILED ACTION**

#### Formal Matters

Applicants' amendment filed May 15, 2005 is acknowledged. Claims 2 and 15 are pending and under examination in this office action.

## Claim Rejections Withdrawn

The rejection of claim 15 under 35 U.S.C. 102(b) and (e) is withdrawn in response to Applicants' amendment of claim 15, as set forth in the Response filed May 15, 2005.

The rejection to claims 2 and 15 under 35 U.S.C. 112, second paragraph as indefinite in the phrase "having (or "has") the N-terminal amino acid sequence" is withdrawn in response to Applicants' amendment of claims 2 and 15, as set forth in the Response filed May 15, 2005.

New and remaining issues are set forth below.

#### Claim Rejections - 35 USC § 101

The rejection to claim 2 under 35 U.S.C. 101 as claiming the same invention as claim 2 in U.S. Serial No. 10/665,867 is maintained. Applicants assert that they will consider canceling claim 2 in the '867 application once the rejection is made non-provisional.

The rejection to claim 15 under the judicially created doctrine of obvious-type double patenting as being unpatentable over claim 15 of U.S. Serial No. 10/665,867 is

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maintained. Applicants assert that they will consider filing a Terminal Disclaimer once the rejection of claim 15 of the instant application is made non-provisional, however until the Terminal Disclaimer is received, the rejection is maintained.

## Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 and 15 are newly rejected under 35 U.S.C. 112, second paragraph, as indefinite in the phrase "shown in" SEQ ID NO: 2. The phrase "as shown in" is vague and indefinite because it is not clear whether the term is directed to the full-length amino acid of SEQ ID NO: 2, or to a portion of SEQ ID NO: 2. The metes and bounds of the claim thus cannot be ascertained. If the claim language was amended to include the phrase "of" SEQ ID NO: 2 the rejection would be obviated.

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# **Advisory Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory S. Emch whose telephone number is (571) 272-8149. The examiner can normally be reached on Monday through Friday from 8:30AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony C. Caputa can be reached at (571) 272-0829. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory S. Emch, Ph. D.

Patent Examiner Art Unit 1646

June 24, 2005

JOSEPH MURPHY PATENT EXPLANCES